



April 10, 2002

Mr. Cary L. Bovey
Law Offices of Cary L. Bovey
600 Round Rock West Drive, Suite 603
Round Rock, Texas 78681

OR2002-1776

Dear Mr. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161068.

The City of Bartlett (the "city"), which you represent, received a request for "all police reports made by and concerning" a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record would interfere with law enforcement or prosecution of crime; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2), (b)(1), (2). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsections 552.108(a)(1) and (b)(1) protect information that pertains to a pending criminal investigation or prosecution. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication.

You claim that the submitted information is excepted from disclosure under 552.108(a)(2) or 552.108(b)(2) because it “concerns . . . an investigation that has not resulted in conviction or deferred adjudication.” However, you also inform us that the submitted information “relates to investigations of incidents that *are being performed* by the Bartlett Police Department.” (Emphasis added.) Because you have provided this office with conflicting arguments, you have not demonstrated the applicability of section 552.108. Therefore, the city may not withhold any of the submitted information under section 552.108.

We next address your argument regarding section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure information that is “confidential by law, either constitutional, statutory, or by judicial decision.” See Gov't Code § 552.101. You assert that the social security number in the submitted documents is made confidential by Title 42, section 405(c)(2)(C)(vii) and Title 26, section 7213(a) of the United States Code.

Title 26 of the United States Code is the Internal Revenue Code, and the section you pinpoint concerns the confidentiality of information obtained from a tax return. Because the submitted social security number comes from a voluntary statement given to the police rather than from a tax return, we find Title 26 to be wholly inapplicable.

The other federal provision you cite is Title 42, the Social Security Act. The 1990 amendments to the Social Security Act make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See 42 U.S.C. § 405(c)(2)(C)(viii)(I); *see also* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number on the voluntary statement is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under

section 552.101. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number information, you should ensure that this information was not obtained or maintained by the police department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we address your argument regarding section 552.130 of the Government Code. Section 552.130 provides in part that “[i]nformation is excepted from the requirement of Section 552.021 if the information relates to . . . a motor vehicle title or registration issued by an agency of this state” Therefore you must withhold the Texas license plate number, which we have marked, under section 552.130.

In summary, the city may not withhold any of the submitted information under section 552.108. The social security number must be withheld if it is obtained or maintained pursuant to a law enacted on or after October 1, 1990. The city must withhold the motor vehicle information we have marked.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

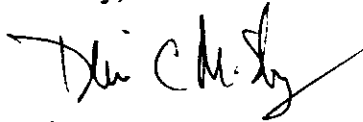
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 161068

Enc. Submitted documents

c: Ms. Lana Hill
Box 95
Bartlett, Texas 76511
(w/o enclosures)